IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3835 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VIKRAMBHAI RASIKLAL SHAH - Applicant(s)
Versus
M/S.MAZDA AGENCIES,THRO'ITS PARTNER & 1 - Respondent(s)

==========

Appearance :
MR UA TRIVEDI for Applicant(s) : 1,
MR RR SHAH for Respondent(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2007

ORAL JUDGMENT

1. Rule. Mr.R.R.Shah, learned Advocate waives service of rule on behalf of respondent No.1. Mr.M.R.Mengdey, learned APP waives service of rule on

behalf of respondent No.2.

2. Present application has been filed by the original accused No.2 under Section 482 of the Criminal Procedure Code to quash and set aside the complaint being Criminal case No. 6074 of 2004 pending in the Court of the learned Chief Judicial Magistrate, Vadodara.

3. The brief facts of the case are that the petitioner was Director of the two companies viz. Printpack Industries Limited (for short 'PIL') and Gujarat Printpack Industries Limited (for short 'GPIL'). On 16.01.2003, the petitioner entered into an MOU with the other shareholders of the Company. As per the said MOU it was agreed between the petitioner and other shareholders that the petitioner shall not take any part in the management of the said Company. According to the petitioner, prior to the execution of the said MOU in the year 2002, the petitioner and his family members had transferred their shares of PIL, in favour of one of the Directors of the Company who later on took over the management of the Company as agreed under the aforesaid MOU. In pursuance to

the aforesaid MOU, the petitioner resigned as Director from the said Company on 17.01.2003.

According to the petitioner, since PIL owed some amount to respondent No.2, some cheques were issued in favour of the respondent No.2 by the said company. However, same were not deposited by its due dates. Thereafter, on 15.03.2004, GPIL through its two Directors namely Mr.Vikarm Rasiklal Shah and Mr. G.B.Pandya issued cheque in favour of respondent No.2. When the said cheque was presented for payment by respondent No.2, the same was dishonoured by the Bank on 21.07.2004. Respondent No.2, therefore, send a notice under Section 138 of the Negotiable Instruments Act to the PIL, two Directors of PIL and the petitioner herein. In pursuance to that respondent No.2 filed the complaint in question, in which process were issued against the petitioner and other accused, by the trial Court. Being aggrieved and dissatisfied with the same, the petitioner has preferred present application under Section 482 of the Criminal Procedure Code to quash the complaint against the petitioner.

4. Mr.U.A.Trivedi, learned Advocate appearing

on behalf of the petitioner has vehemently submitted that so far as the cheque in question is concerned, the same was issued by the GPIL through its Director -petitioner. However, in spite of the fact that cheque has been issued by the GPIL no complaint has been filed against GPIL and/or Directors of the GPIL and the impugned complaint has been filed against the PIL and its Directors. It is submitted by him that so far as the petitioner is concerned, earlier he was Director of the PIL but he has resigned as Director of the said Company since 15.01.2003 prior to the issuance of the cheque in question. It is submitted that when GPIL issued cheque in question which is dishonored, GPIL is not joined as accused and only PIL and its Directors are joined as accused, it cannot be said that the petitioner as Director of the PIL has committed any offence as alleged under Sections 138 of the Negotiable Instruments Act. It is further submitted by him that unless and until GPIL who has issued the cheque and its Directors are joined as accused, there cannot be any complaint against the petitioner as Director of PIL for the offence punishable under Section 138 of the

Negotiable Instruments Act. Therefore, it is requested to quash the complaint.

5. Shri R.R.Shah, learned Advocate appearing on behalf of respondent No. 1 – original complainant is not in a position to satisfy this Court how the petitioner as Director of PIL can be said to have committed any offence punishable under Section 138 of the Negotiable Instruments Act when the cheque in question has been issued by the GPIL; and no complaint has been filed against GPIL and its Directors.

6. Under the circumstances and considering the fact that cheque in question which is dishonored is issued by the GPIL and the petitioner signed the said cheque as Director of GPIL and when the complaint has been filed against the PIL and its Directors who has not issued the cheque, there cannot be any offence committed by the PIL and its Directors for the offence punishable under Sections 138 and 141 of the Negotiable Instruments Act. The petitioner is joined as accused as Director of PIL and admittedly no cheque has been issued by the PIL, the cheque in

question which is dishonored is issued by the GPIL against whom no complaint is filed. Under the circumstances, complaint against the petitioner as Director of PIL requires to be quashed and set aside.

7. For the reasons stated above, the petition succeeds and impugned complaint being Criminal case No. 6074 of 2004 pending in the Court of the learned Chief Judicial Magistrate, Vadodara qua the petitioner for the offence punishable under Sections 138 and 141 of the Negotiable Instruments Act is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

satish